

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL LOWREY, ET AL,

Plaintiffs,

v.

BEZTAK PROPERTIES, ET AL.,

Defendants.

Case No. 06-13408

Honorable Nancy G. Edmunds

**ORDER ACCEPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
DENYING PLAINTIFFS' MOTION FOR CONTEMPT AND SANCTIONS [130]**

This matter comes before the Court on the Magistrate Judge's Report and Recommendation denying Plaintiffs' motion for contempt and sanctions. Being fully advised in the premises and having reviewed the record, the pleadings, the Report and Recommendation and Plaintiffs' objections, the Court finds that the Magistrate Judge reached the correct conclusion in the Report and Recommendation.

As to the Declaration of Plaintiffs' expert, David Esau, this Court observes that Plaintiffs should have attached that Declaration to its moving brief. Rather, by doing so in its Reply, it foreclosed Defendants' opportunity to respond to it. Moreover, that the Report and Recommendation fails to address this Declaration does not render its conclusion incorrect. Upon de novo review of this matter, it is apparent that the parties dispute how best to measure the improvements required under the Stipulated Order of Partial Settlement and Conditional Release [58]. Despite Plaintiffs' arguments otherwise, this Court ACCEPTS and ADOPTS the Magistrate Judge's conclusion that Plaintiffs' motion

should be denied because they failed to show by clear and convincing evidence that Defendants disobeyed the Stipulated Order and thus should be held in contempt and sanctioned.

SO ORDERED.

s/Nancy G. Edmunds
Nancy G. Edmunds
United States District Judge

Dated: January 27, 2009

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on January 27, 2009, by electronic and/or ordinary mail.

s/Carol A. Hemeyer
Case Manager

s/NANCY G. EDMUNDS
Nancy G. Edmunds
United States District Judge

Dated: January 27, 2009